IN THE HIGH COURT OF BOMBAY AT GOA

MISCELLANEOUS CIVIL APPLICATION NO. 780 OF 2005

Shri Mathany Saldanha,
St. Inez, Panaji-Goa. ... Applicant

versus

1. Shri Jitendar Deshprabhu,
   Miramar, Panaji-Goa.

2. The Hon'ble Speaker,
   Goa legislative Assembly
   with his office at Goa
   Legislative Assembly
   Complex, Porvorim-Goa. ... Respondents

Mr. V. P. Thali with Ms. G. Pednekar, Advocates for the Applicant.

None for the Respondent No.1.

Mr. S. G. Dessai, Senior Advocate with Mr. Shivan Dessai, Advocate for the Respondent No.2.

Mr. S. K. Kakodkar, Senior Advocate as Amicus Curiae.

CORAM : R. M. S. KHANDEPARKAR &
N. A. BRITTO, JJ.

DATE : 13TH FEBRUARY, 2006.

ORAL ORDER(Per R. M. S. KHANDEPARKAR,J.)

Heard.

2. The applicant seeks direction to the respondent no.2 for payment of the salaries and allowances to the petitioner as payable to a Member of the Legislative Assembly, along with the arrears thereof.

3. It is the case of the applicant that he had been elected as a Member of the Legislative Assembly from Cortalim Constituency. However, by Order dated 9-8-2005, he was declared by the respondent no.2 to have incurred disqualification under para 2 of Xth Schedule of the Constitution of India. The same has been challenged by the applicant in Writ Petition No.329 of 2005 and while issuing the Rule, this Court had stayed the Order of disqualification passed by the respondent no.2. The applicant has not been paid with his salaries and allowances not only from the date of the Order of respondent no.2 but since May, 2005. The request by the applicant under his letter dated 22-9-2005 for the release of his

salary and allowances has been turned down by the respondent no.2 and the same was communicated to the applicant under letter dated 14-10-2005 by the Assistant Accounts Officer of the Goa Legislature Secretariat. According to the applicant, the letter communicates to him that the Order of this Court dated 23-8-2005 is not clear about such payment.

4. We have heard Mr. V. P. Thali, the learned Counsel for the applicant and Mr. S. G. Dessai, the learned Senior Counsel for the respondent no.2 as also Mr. S. K. Kakodkar, the learned Senior Counsel as Amicus Curiae appointed by this Court taking into consideration the important question of law involved in the matter. Though, Mr. Kakodkar had earlier appeared for the first respondent at the time of hearing of the Writ Petition No.329 of 2005 for admission and on the point of interim relief, it was at the request of this Court that Mr. Kakodkar addressed the Court on the points of law involved in the matter, and we do place on record our appreciation for his valuable assistance in the matter.

5. It is the contention on behalf of the applicant that in view of stay having been granted to the Order of disqualification the applicant continues to be the Member of the Legislative Assembly of Goa for all purposes and, therefore, he is entitled to enjoy all the benefits ensured to him under the constitutional provisions, particularly under Article 195 thereof. The limited restrictions imposed while staying the order of disqualification are to the effect that he should not speak and vote at the Assembly proceedings. The function and the duties of the Member of the Legislative Assembly are not restricted to the participation in Assembly proceedings in the form of speech or vote therein but the applicant as a Member of the Legislative Assembly has to perform various other activities in relation to the Constituency from which he is elected as well as other functions in terms of Rules of Procedure and Conduct of Business of the Goa Legislative Assembly.

6. Mr. V. P. Thali, the learned Counsel for the applicant has also placed on record a chart giving details of the salary and allowances payable to a sitting Member of the Legislative

Assembly. Attention has also been drawn to an Order passed by the Apex Court in Special Leave to Appeal(Civil) No.17880/2002 filed by **Narsing Gurunath Patil and others** v. **Arun Gujarati and others** dated 1-11-2002 as well as in Civil Appeal No.3578/2005 filed by **Dayanand Rayu Mandrekar** v. **Chandrakant Uttam Chodankar and others** passed on 13-7-2005 in support of his contentions.

7. On the other hand, while clarifying that the dues payable to the applicant till July, 2005 have already been paid, it is submitted by Mr. S. G. Dessai, the learned Senior Counsel on behalf of the respondent no.2 that by Order dated 23-8-2005 this Court has merely allowed the applicant to remain present during the Assembly proceedings without any right to participate and/or to vote therein, with specific exclusion of any right to claim salary or allowances payable to a Member of the Legislative Assembly. The Court has specifically refrained itself from giving any direction to pay the salary or allowances to the applicant, while passing the Order dated 23-8-2005 and, therefore, the applicant cannot re-agitate the said issue by filing another miscellaneous application for the said relief.

8. Mr. S. K. Kakodkar, the learned Senior Counsel has submitted that perusal of the Order dated 23-8-2005 does not disclose any absolute stay of the Order of disqualification having been granted. It grants a limited relief whereby it merely allows the applicant to sit in the Assembly without ensuring any other right of a sitting Member of the Legislative Assembly. Being so, the applicant is not entitled to claim any benefit or any other right except that of attending the proceedings without actual participation therein in any manner. The applicant's perception about the Order of 23-8-2005 to be that of absolute stay of the disqualification Order is totally wrong and out of ignorance of the legal implications of the said Order. He has further submitted that the claim relates to the dues payable out of the public exchequer. Being so, once the applicant is disqualified to be a Member of the Legislative Assembly and that there is no absolute stay of the Order of disqualification, but he is merely allowed to attend the proceedings during Assembly sessions, that would not entitle him to perform all the duties of a Member of the Legislative Assembly. Unless a person is lawfully entitled to perform all the duties of a Member of the Legislative Assembly, question of payment of remuneration cannot arise inasmuch as

that the principle of no work no pay would also apply in such cases. He has further submitted that the Court normally do not grant stay to any Orders of disqualification unless such an Order has been passed as a result of some technical defect or matters of trifle nature and certainly not related to corrupt practices or political immorality. As in the case at hand, the disqualification is stated to have been made on account of political immorality, this Court did not grant absolute stay of the Order of disqualification but merely allowed the applicant to attend the Assembly sessions solely to avoid the disqualification under Article 190(4) of the Constitution of India.

9. Mr. Kakodkar also drew our attention to the decisions of the Apex Court in the matter of **Kirpal Singh,M.L.A.** v. **Uttam Singh and another** ((1985) 4 SCC 621) and **Bank of India** v. **T. S. Kelawala and others** ((1990) 4 SCC 744).

10. Mr. V. P. Thali, the learned Counsel for the applicant has also submitted that in the absence of stay of Order of disqualification, question of further disqualification under Article 190(4) of the Constitution of India, would not arise

because a Member of the Legislative Assembly who has already been disqualified cannot suffer further disqualification under the said Article unless the first disqualification is either stayed or set aside and, therefore, the Order of 23-8-2005 which specifically refers to the reason for passing that Order as to avoid further disqualification, was passed without taking into consideration import of and applicability of Article 190(4) to the facts of the case. According to the learned Counsel the said restrictions are generally imposed in such matters and accordingly the same were imposed in the case in hand.

11. Undoubtedly, Article 190(5) of the Constitution provides that the Members of the Legislative Assembly shall be entitled to receive such salaries and allowances as may from time to time be determined by the Legislator of the State by law. It is also not in dispute that sitting Members of the Legislative Assembly would be entitled to draw salaries and allowances in terms of The Goa Salary, Allowances and Pension of Members of the Legislative Assembly Bill, 2004 hereinafter called as "the said Act", which is in force from 1-7-2004. It is also a matter of record that by Order dated 9-8-2005 the applicant was

disqualified in terms of para 2 of the Xth Schedule of the Constitution. The claim of the applicant, however, is that the said Order has been stayed by this Court on 23-8-2005 and, therefore, the applicant is entitled for all the privileges including the salary and allowances in terms of the said Act r/w Article 190(5) of the Constitution. The Order of 23-8-2005 passed in Writ Petition No.329/2005 on the basis of which the entire claim in the application is made reads thus:-

> "Heard Mr. Thali, learned Counsel for the petitioner, Mr. Kakodkar, learned Senior Counsel for the respondent no.1 and Mr. Dessai, learned Senior Counsel for the respondent no.2.
>
> We are of the considered view that the matter requires consideration. Hence Rule.
>
> The Advocates on record for the respective respondents waive service.
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> Rule on stay, returnable forthwith. In the meantime, the petitioner shall be entitled to attend the Assembly proceedings so as not to be disqualified, but he shall not be entitled to speak and vote".

12. Bare perusal of the above quoted Order would apparently reveal that this Court after issuing Rule on stay, made it returnable forthwith. In other words, the matter on the point of interim relief during the pendency of the Writ Petition was conclusively heard by the Court. The hearing relating to the request for the interim relief was not postponed to any future date but it was taken up and considered on the same day immediately after issuance of notice for hearing on interim relief in the nature of stay of Order of disqualification which was under challenge in the writ petition. After the conclusion of the said hearing, the Court passed the Order allowing the applicant "to attend the Assembly proceedings so as not to be disqualified". The points, therefore, which arise for consideration are: What is the scope of this Order? Does it amount to grant of absolute stay of the Order of disqualification passed on 9-8-2005? Does it revive the status of the applicant as a full-fledged Member of the Legislative Assembly with limited restrictions in the nature of prohibition to speak and vote in the Assembly proceedings? What sort of rights of the applicant are sought to be safe guarded

under this Order? What sort of disqualification of the applicant is sought to be avoided by this Order?

13. As already observed above, plain reading of the Order would disclose that the Court had proceeded to decide about the issue of the interim relief immediately after the issuance of Rule on stay. The expression "Rule on stay" discloses that the Court had called upon the respondents to show cause as to why the stay of the impugned Order should not be granted. The cause was required to be shown by the respondent forthwith as the Rule on stay was made returnable forthwith. Having issued the Order requiring the respondent to show cause as to why the stay should not be granted in relation to the Order of disqualification, the Court proceeded to hear the matter on the said aspect and further after hearing the parties in respect thereof, passed the Order in relation thereto, to be effective during the pendency of the petition; however, the Court did not pass any specific Order of absolute stay of the Order of disqualification of the applicant nor granted any interim relief in the nature asked for, but restricted the interim relief to the

extent of permitting the applicant to attend the Assembly proceedings without any right to speak and vote.

14. The expression "Rule on stay" is sought to be construed on behalf of the applicant to mean grant of absolute stay of the impugned Order. The expression "Rule on stay" whenever used with reference to any legal proceedings initiated in the Court, it does not signify grant of interim relief in the nature asked for, but it discloses notice to the respondent in relation to the proposed adjudication of the subject in respect of which the Rule is issued. When the Rule on stay is issued, it means the Court considers it necessary to proceed to decide about the relief claimed in the nature of stay of the impugned Order. In that case, the addressee of the notice of such rule is required to show cause within the period stipulated in the notice as to why such rule issued by the Court should not be made absolute. When there is no such specific period disclosed but it is made "returnable forthwith", it means that the cause is required to be shown immediately after issuance of "Rule on stay" and that thereupon the Court proceeds to decide the matter on the

point of stay forthwith. That is what happened in the case in hand on 23-8-2005.

15. The expression "Rule" with reference to any Court proceedings in terms of Black's Law Dictionary means "to command or require; to decide a legal point". Therefore, whenever a Rule is issued on the subject like "stay" or "interim relief", it would mean that the Court is inclined to grant the stay or the interim relief, as the case may be, unless the cause is shown to the contrary. When such "Rule" is issued, and thereafter, upon the cause being shown by the opposite party, the Court would make either the Rule absolute or would pass an appropriate order as the facts and circumstances would demand. The time to show cause may consists of a period of number of days or may be even forthwith. But after the expiry of such specified time, the Court would proceed to pass the order disposing the matter on which the Rule had been issued. In cases where the Rule is issued on stay, the same is either to be made absolute by granting the stay as prayed for or in some other form as the circumstances may warrant or may pass any other appropriate relief.

16. In the case in hand, on 23-8-2005 the Court heard the matter forthwith on issuance of the Rule on stay and passed the Order on the subject of stay thereby granting a very limited relief as quoted above. Consequently, the interim relief that was granted after hearing the parties on issuance of Rule on stay in relation to the impugned Order of disqualification was to the extent of allowing the applicant to attend the Assembly proceedings without any right to speak or to vote, and such a relief was granted solely to avoid any disqualification which could otherwise be incurred in terms of Article 190(4) of the Constitution. The said reason for grant of interim relief in the nature it was granted is very clear from the expression in the said Order that "so as not to be disqualified" immediately after the expression "to attend the Assembly proceedings". The contention of the applicant that the Order of 23-8-2005 is an Order of absolute stay of his disqualification cannot be accepted. There is no such order of absolute stay granted on 23-8-2005 in the said petition. The perception of the applicant in respect of the Order of 23-8-2005 is certainly wrong.

17. Reference to two interim Orders passed by the Apex Court is of no help to the applicant. In neither of the Orders there is any law laid down by the Apex Court. Both the Orders were passed in the facts and circumstances of respective cases. Being so, merely because in some case an absolute stay has been granted to the disqualification Order that will not lead to a conclusion that in each and every case of disqualification, moment the petition challenging the same is filed, the stay would follow as a matter of course, nor it can be presumed that moment during the pendency of such petition, the applicant is allowed by the Court to attend the Assembly proceedings without any right to speak and vote, that itself would enable the applicant to enjoy all the benefits including salaries and allowances as a Member of the Legislative Assembly. Every case will have to be decided depending upon the facts of the case and the scope of the interim Order passed therein. Similarly, the meaning of the expression "so as not to be disqualified" found in Order of 23-8-2005 cannot be understood by referring even to the similar phraseology in the orders passed in other cases.

18. Curiously enough, it is sought to be contended that the expression "so as not to be disqualified" was used in the Order of 23-8-2005 merely by way of reproduction thereof from the Orders in other matters which were brought to the notice of the Court at the time of hearing of the Writ Petition on the said day. It was also sought to be contended that there was absolutely no consideration of the import and/or applicability of the provisions of law comprised of Article 190(4) of the Constitution to the facts of the case at hand before passing the said Order. The contention is totally devoid of substance. It is always to be borne in mind that in such cases if the applicant ultimately succeeds in the petition, the Order of the Speaker disqualifying the applicant stands quashed and it would render such Order of disqualification to be non effective for all purposes, and consequently the applicant would continue to be fully qualified Member of the Legislative Assembly retrospectively from the date of Order quashed in the petition. However, having remained absent from attending the Assembly proceedings during the period of pendency of such petition without any stay or any other interim relief which could permit the applicant to attend the Assembly proceedings, inspite of

revival of his status as that of Member of the Legislative Assembly retrospectively from the date of Order of disqualification itself, he could incur disqualification in terms of the provisions of law comprised of Article 190(4). To avoid such a situation, the permission is granted to such an applicant to continue to attend Assembly sessions even during such period without any right to speak and vote. Whether such a relief would be sufficient for due compliance of mandate of Article 190(4) is a totally different issue with which we are not concerned in this matter and at this stage. Suffice to observe that even to make the ultimate order to be passed in the petition effective and executable, by way of abundant caution, the applicant has been permitted to attend the Assembly proceedings but without any right to speak and vote.

19. It cannot be disputed that a Member of the Legislative Assembly is not merely required to attend the Assembly proceedings but is required and expected to perform various other functions and has also to attend meetings of various Committees constituted under Rules of Procedure and Conduct of Business of the Goa Legislative Assembly as well as he has to

attend to various other duties towards the Constituency from which he is elected. But all those activities are to be performed by a Member of the Legislative Assembly. If a person ceases to be a Member of the Legislative Assembly on account of disqualification Order, he cannot still insist for continuation of all the benefits attached to the Office of the Member of the Legislative Assembly nor he can claim the salary, allowances and other emoluments attached to the Office of the Member of the Legislative Assembly. Till and until the Order of disqualification is either set aside or there is absolute stay thereof, the applicant cannot claim any such benefits or emoluments attached to the Office of the Member of the Legislative Assembly. Mere permission granted to attend the Assembly proceedings in order to avoid the disqualification in terms of Article 190(4) of the Constitution would not amount to revival of his right to claim all the benefits attached to the Office of the Member of the Legislative Assembly.

20. One can advantageously refer to the decision of the Apex Court in the case of **Kripal Singh, M.L.A.** v. **Uttam Singh and another**(supra) wherein the Apex Court while noting that

"while admitting the appeal, this Court made an interim order enabling the appellant to attend the Assembly and sign the register, without participating in the proceedings or voting and without drawing any remuneration", held that "without meaning any disrespect to the learned Judges who made the interim order we think that where an election is set aside for no fault of his, such a corrupt practice committed by him or his agent or a disqualification suffered by him, but on the ground that someone else's nomination had been improperly rejected, the more appropriate order would perhaps be to grant an absolute stay so that the Constituency may not go unrepresented for no fault of either the elected or those elected". In other words, in cases where the disqualification is on technical grounds or because of no fault of the elected member, certainly absolute stay of such disqualification order would be just and proper, but in cases where the disqualification is as a result of having engaged in corrupt practices or on account of political immorality, then expectation of absolute stay of such disqualification order may perhaps be a wishful thinking.

21. That takes us to the second point relating to the applicability of the principle of service jurisprudence-no work no pay- to the cases of the nature in hand. Undoubtedly, in terms of Article 195 of the Constitution a Member of the Legislative Assembly is entitled to receive such salary and allowances as may be determined by the Legislator and accordingly the Act passed by the Goa Assembly in that regard. In fact, in terms of Section 3 of the said Act, a Member of the Legislative Assembly is entitled for a sum of Rs.5000/- besides daily allowances of Rs.750/- for each day during any period on duty and in addition Rs.300/- per day in lieu of accommodation. In terms of Section 4 he is entitled for consolidated allowances at the rate of Rs.5000/- per month to cover conveyance, postage, stationery and constituency expenses. Further, he is also entitled for Rs.8000/- per month under Section 9 as Constituency allowance. He is also entitled for Constituency office allowance to the tune of Rs.4000/- per month in terms of Section 10 of the Act. Under Section 14 he is entitled for travelling allowance in respect of every journey performed by him for attending any official business as a Member outside the State of Goa. Under Section 15

he is entitled to enjoy maximum of 250 litres of petrol/diesel per month for the use of his personal vehicle. Under Section 19, he is entitled for personal assistance to the tune of Rs.18,000/- per month. Section 18 of the said Act ensures telephone facilities to the extent of Rs.5000/- per month and Section 21 guarantees reimbursement of electricity and water charges of Rs.4000/- per month. Medical treatment free of charge is also assured under Section 16 to a Member of the Legislative Assembly as well as to the members of his family. He is also entitled for motor car advance under Section 5 to the extent of Rs.6,00,000/-. The expression "period on duty" has been defined under Section 2(j) of the said Act to mean the days on which the Member attends the Assembly or a sitting or a meeting of a Committee or when he is on tour for each day of sanctioned travel and the expression "term of office" is defined under Section 2(l) to mean the period beginning with the date when such a member takes his seat in the Assembly and ending with the date on which his seat becomes vacant. Article 195 of the Constitution specifically refers to the right of the Member of the Legislative Assembly to avail such monetary benefits in the form of salary and allowances. The dictionary meaning of the term "salary" is

compensation paid for any service rendered. Undoubtedly, the elected members of the Assembly as rightly submitted by the learned Counsel for the applicant are not expected merely to attend the Assembly and to participate in Assembly proceedings but also have duties towards their Constituency and welfare of the Constituency and for all these services to be rendered by them salary and allowances are assured under Article 195 of the Constitution which are to be quantified in terms of the statute to be passed by the State Assembly in that regard. Being so, in our considered opinion, principle of service jurisprudence "no work no pay" would apply with equal force even in cases of the payment of salary and allowances to be made to the Members of the Legislative Assembly as assured under Article 195 of the Constitution.

22. The law laid down by the Apex Court in the case of **Bank of India** v. **T. S. Kelawala and others** (supra) clearly disclose that in case of failure to render service, question of payment of salary or wages would not arise.

23. Once, it is clear that neither this Court has granted

absolute stay of disqualification Order nor the applicant is lawfully entitled to perform all the functions and duties of a Member of the Legislative Assembly, question of payment of salary and allowances, till the disqualification Order is set aside, does not arise and, therefore, question of giving any direction to the respondent no.2 for payment of salary and allowances to the applicant does not arise. The Order dated 23-8-2005 merely enables the applicant to attend the Assembly proceedings without any right to speak or vote, so as to avoid the possibility of incurring the disqualification under Article 190(4) of the Constitution, and therefore, the said Order safeguards only those rights of the applicant.

24. As regards the contention on behalf of respondent no.2 that the matter relating to interim relief having been adjudicated and disposed of by Order dated 23-8-2005, the applicant is not entitled to re-agitate the same issue by filing yet another miscellaneous application in that regard, undoubtedly cannot be ignored but need not be dealt with in the case at hand considering the view we are taking in the matter as above.

25. In the result, therefore, the application fails and is dismissed with no order as to costs.

R. M. S. KHANDEPARKAR, J.

N. A. BRITTO, J.

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